REMARKS

Claims 1-36 and 42-51 are pending in the application. Claims 1-23, 32-36 and 42-46 have been withdrawn from consideration. Claims 24-31 and 47-51 stand finally rejected under 35 U.S.C. 102(e) as being anticipated by Lamarque III et al., United States Patent No. 6,690,651 (Lamarque). Other prior art is made of record but not relied on.

In the present response, Applicant has amended the independent claims, namely claims 24, 29 and 47. Additionally, Applicant has canceled claims 25, 27, 30 and 48. The canceled claims contain limitations which have been incorporated into the independent claims. Additionally, Applicant has changed the description of desired path quality from "desirable" to "acceptable" in order to more closely conform to the specification at page 24, line 5.

The Rejection and the Lamarque Reference

Claims 24-31, 37-41 and 47-51 were rejected under 35 U.S.C. §102(e) as being anticipated Lamarque (U.S. Patent No. 6,690,651). Reconsideration and withdrawal of the rejection are respectfully requested.

Lamarque fails to disclose or suggest monitoring paths over which packets are not currently being transmitted as now recited in independent claims 24, 29 and 37.

Paragraph 4 of the rejection refers to Lamarque's teachings at column 1, line 62 - column 2, line 7, at column 3, lines 52-60, column 4, lines 17-20 and at column 8, lines 12-22. The initial cited passage states, "Responsive to quality of service of the voice call failing to meet a quality of service threshold in the packet based network, a signal is sent to the user to see if the routing of the voice call should be changed to another path. ... Alternatively, the call may be automatically rerouted to another path ... in the packet based network." Lamarque discloses rerouting, but does not disclose or suggest monitoring paths over which packets are not currently being transmitted. Applicant, as further explained below, recites further elements in addition to rerouting. Rerouting alone, as disclosed by Lamarque, does not anticipate Applicant's amended claims. It is further submitted that one skilled in the art cannot arrive at Applicant's claimed method and system solely by reading Lamarque's specification.

Lamarque's teachings include a description of two forms of rerouting, but do not disclose analysis of additional paths as now recited in independent claims 24, 29 and 47. At column 3, lines 51-63, Lamarque refers to a first form of rerouting of calls when the quality of service on a packet-based network becomes unacceptable. This portion of the Lamarque disclosure does not form the basis for a rejection. Lamarque teaches switching the call to a path 144 (line 60). The path 144 includes PSTN 102. At column 3, lines 3 and 4, Lamarque specifically points out that PSTN 102 is a switched network. Lamarque's PSTN 102 by definition is inoperative to

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transmit data packets. Applicant has specifically recited transmitting data packets. There is no issue as to this portion of Lamarque's disclosure.

A second form of rerouting alluded to by Lamarque forms the basis of the rejection of paragraph 4 of the Final Action. The rejection of paragraph 4 states that Lamarque teaches that a call is rerouted to take a different path on the packet based network. The Examiner cites column 4 and column 8 of Lamarque. At column 4, lines 17-23. Lamarque states:

> The calls may be transferred or rerouted in a number of ways. For example, the path may be to another path having a higher quality of service on the packet based network or to a path through a legacy telephone environment.

Column 8, at lines 12-22, refers to a message flow diagram for transferring a call from one packet based network path to another packet based network path. This disclosure of Lamarque does not illustrate first, second and third locations on a computer network. However, an anticipation rejection is made on the basis that, "The call taking a different path inherently covers the action of transmitting packets to a third location before transmitting them to the destination."

The Amended Claims

In claims 24, 29 and 47 as amended, Applicant recites monitoring a

preselected plurality of communication paths including the path over which packets

are currently being transmitted and also monitoring additional paths over which the

packets could be transmitted, but which are not in use to transmit a current series of

packets. This recitation is supported in the specification, for example, at page 22,

lines 7-18. A monitoring and routing system, the M/R system 366, performs route

selection based on testing that is done on possible routes between a source

interface and a destination interface. At page 23, lines 15-18, Applicant's

specification states, "It is contemplated that the M/R system continuously monitors

the characteristics of the various paths between each Interface. This allows the M/R

system to analyze and select the most desirable path to route and/or re-route calls

or communications session." When rerouting is done in accordance with Applicant's

claims, there is a high degree of confidence that the rerouted call will be in a

communications path with satisfactory transmission characteristics.

In contradistinction, in Lamarque's disclosed system, a connection is

established, and communication continues over the connection until quality

degrades. A new path is then selected. However, transmission characteristics of a

new path in which there is no current call are not known. The monitoring process

described by Lamarque at column 6, line 61 to column 7, line 12 does not look at the

next path to be selected or evaluate a number of choices out of which to select a

next path. At column 5, lines 50-53, Lamarque specifies that quality of service is monitored for calls in a packet based network. Lamarque begins monitoring communications on the new path, and switches communications to yet another path when service again degrades. The new path could also provide a low grade of service. Likelihood of losing data packets is greatly increased.

It should also be noted that in the claims as amended, Applicant recites that the communications paths of the transmitted packets are established between interfaces. As explained at page 16 of Applicant's specification, an interface is a device which can be configured to facilitate communication between the systems of a central telephone office and a computer network. Applicant's claim will not be met by a disclosure with an unspecified terminus for a communications path.

The art of record neither discloses nor suggests a system for transmitting packet communications in which a plurality of paths are evaluated prior to switching from an unacceptable communications path to another communications path as now recited in independent claims 24, 29 and 47. It is therefore submitted that the claims as presently amended are allowable.

CONCLUSION

Applicant has demonstrated that Applicant's claim recitations are not disclosed directly or inherently in the art of record and that the claims as amended avoid the prior rejection under 35 U.S.C. 102(e). For the reasons pointed out above,

it is believed that this application is in condition for allowance, and such action is respectfully solicited. If there remain any issues to be discussed, Examiner Jung is invited to telephone the undersigned attorney.

Respectfully submitted,

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